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## **AN EUROPEAN TAX THE FISCAL SOVEREIGNTY OF THE MEMBER STATES vs. THE AUTONOMY OF THE EUROPEAN UNION**

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### **ABSTRACT**

Before the next multiannual financial framework starts in 2014, the European Commission and the European Parliament want to introduce EU taxes to fund the future EU budget. The taxes are necessary to curtail the ominous *juste retour* behavior of the Member States. The behavior goes together with the present way of financing the EU by direct contributions of the Member States. EU taxes must give room for EU policies with a real added value for Europe as a whole. In the discussion about EU taxes, there are two focal discussion points. Firstly, Member States want to keep their fiscal sovereignty, and secondly, the Union seeks a greater autonomy from the direct contributions of the Member States. The paper concludes that the first concept is unhelpful in the discussion; it can only serve populist nationalistic causes. The second concept can never be a goal per se, it finds no support in the for EU policy guiding principle of subsidiarity. The article ends with a sketch of two possible EU taxes that remain within the present *status quo*.

*Keywords: Eurotax, Fiscal sovereignty, EU financial autonomy, subsidiarity, quality of legislative process*

### **INTRODUCTION**

On September 7, 2010, José Barroso, President of the European Commission, delivered his first State of the Union Address (Barroso, 2010). Since matters relating to financing go to the very heart of the common undertaking, the revenues of the EU played a role.

The present system of financing the Union, which is mainly done by direct contributions from the Member States, has two major drawbacks. First, it leads the Member States to focus on net contributors and net recipients. The direct contributions stimulate the Member States in their infamous so-called *juste retour* behavior (Richter,

2008). They look at what they get and what they give to the Union. Expenses with a real added value to Europe as a whole are stifled, e.g., energy security, European infrastructure, and a knowledge-led service economy. The bulk of the expenses, almost 80 percent, go to agricultural subsidies and income redistribution.

Second, the EU has evolved from a mere union of states to a union of states and citizens; a direct link between citizens and the Union is the next logical step. The present system of financing the Union, however, does not create a direct link between citizens and the EU.

An Eurotax, paid to the EU by its citizens, would solve both problems. It, however, brings to the forefront the tension between those who want the EU to become the United States of Europe and those who want to maintain the *status quo* (Begg, 2011). In other words, an Eurotax becomes a debate in view of the fiscal sovereignty of the Member States and the financial autonomy of the Union. How can the EU cope with these two problems is the question we try to answer.

After this introduction, in the second section, we take a closer look at the two main reasons to introduce an EU tax. In the third section, and main body of the paper, we look at the perceived and existing fiscal sovereignty of the Member States and the goal of the EU for a greater financial autonomy from the Member States. In the fourth section, we sketch two possible EU taxes that remain within the present *status quo*. In the final section, we conclude our elucidation of the present muddy discussion about fiscal sovereignty, financial autonomy, and EU taxes.

## A NEW REALLY OWN RESOURCE

A long-held goal for the EU, as Article 201 of the Treaty of Rome stated in the past, just as Article 311 of the Treaty of Lisbon states in the present, is to get a genuine system of own resources. In the seventies of the last century, the Union got its own resources in the form of customs duties, agricultural levies and a percentage of a harmonized tax base of the value-added tax (VAT) in the Member States. National contributions, as they financed the EU during the period directly after its founding in 1957, temporarily disappeared from the scene. However, at present, national contributions, again, finance 85 percent of the EU budget. On the short list of the EU taxes proposed by the European Commission (2010) are (1) taxation of the financial sector; (2) revenues from auctioning under the greenhouse gas Emissions Trading System; (3) a charge related to air transport; (4) VAT; (5) energy tax; and (6) corporate income tax. In its most recent communication the Commission (2011) proposed two taxes: an European value-added tax and a financial transaction tax.

In order to discuss new own resources, some preliminary qualifying remarks are needed in view of the quality of the regulatory process, the causes behind the *juste retour* behavior and the intended direct link of the EU with its citizens.

## THE QUALITY OF THE REGULATORY PROCESS

A first problem is that the EU has come up with an endless list of criteria for an EU tax to fulfill. The criteria used by the EU can be rubricated as budgetary: sufficiency, stability;

efficiency: visibility, operating costs, efficient allocation of resources; equity: horizontal and vertical, fair contributions of the Member States; and political: will consensus be possible among the Member States?, will the fiscal sovereignty of the Member States be maintained?, does an EU tax create a Leviathan? (Begg, *et.al.*, 2008; Catoir, 2004; European Commission, 1998, 2004; European Parliament, 1997, 2007).

Because of a recent European wide consultation in view of the reform of the EU budget the list has grown even more (European Commission 2008). The problem is not only, which is of course an open door, and the EU is well aware of, that no tax can fulfill all the, often contradicting, criteria. Criteria that also have to be added-up somehow for an overall result. As a result, the quality of the legislation remains a problem.<sup>1</sup> Quality is next to being a matter of legality (Voermans, 2009b) also related to the legislative process (Radaelli, 2004; Voermans, 2009a). We have to look at how the social process and pertaining content are guaranteed: did all parties participate in the process and can the expectations be fulfilled. These qualities are impossible to fulfill with the shopping list of criteria. The probable result is an *ad hoc* political choice. For a rational discussion and so to fulfill the quality demands of national and international legislation, a manageable list of criteria is necessary.<sup>2</sup>

### *JUSTE RETOUR BEHAVIOR*

The overriding *juste retour* thinking, the narrow self-interested behavior of the Member States, is diagnosed to be the result of the present way of financing the EU with national contributions. It could, however, as well be diagnosed as a problem of the expenditure side of the EU budget. The budget is focused on agriculture and social and structural cohesion within the Union. The recipients are clearly identifiable. With the present system of financing, it could as well be maintained, is nothing wrong. It is cheap and is felt as equitable by the Member States.

Overall, however, *juste retour* thinking is just another name for *quid pro quo* thinking. This might be the thing to do for individuals as well as Member States (Buchanan, 1999). For although we might have forgotten it, planting a national flag on expenditures and then setting up the balance between contributions to and expenditures from the EU may be the most natural thing to do. At the start of the Union from 1957 until the late sixties, it was the institutionalized practice. Member States, it was generally accepted, would have been unable to agree otherwise. The Treaty of Rome (Art. 200) had separate scales for different categories of expenditures, national contributions, and voting rates. The goal was not to deny interests, but to make use of them (Drucker, 1975; Leen, 2011).

### *VISIBLE TAXES*

The EU shows courage; citizens have to pay in a direct visible way to the Union. For centuries the ultimate goal and wisdom of governments was to collect taxes from its

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<sup>1</sup> See the ongoing Better Regulation project initiated by the European Commission in 2001 ([http://ec.europa.eu/governance/better\\_regulation/transp\\_eu\\_law\\_en.htm](http://ec.europa.eu/governance/better_regulation/transp_eu_law_en.htm)).

<sup>2</sup> To tackle the problem see Begg, 2011; Figueira, 2008; and Heinemann, *et al.*, 2008.

citizens as invisible as possible. Indirect taxes not direct taxes were to be preferred. The current financing represents the old ideal. Customs duties provide 15% of the budget and the remainder comes from direct contributions, based on their Gross Domestic Product (GDP), of the Member States. Both revenues are unrelated to daily life.

The problem, however, is that there are great doubts if democracy, transparency and responsibility can be so organized in the Union that citizens really see the link between what they pay and what they get back. Hence can taxpayers call the Union to order (Bustin, 1972; Klaus, 2009; Pelkmans, 2006). In a sense, the present situation is optimal---the *juste retour* thinking included. It is an means towards fiscal discipline (Heinemann, *et al.*, 2008): to tame the EU Leviathan. Besides that, it is also said that, because taxation will never be popular, an European tax will, contrary to the intention of the EU, diminish the support of the citizens for the Union (Mutén, 2001).

## EUROPEAN TAXES

The problem with European taxes is two-fold. First, it is perceived that they usurp the fiscal sovereignty of the Member States. Second, though they should increase the financial autonomy of the EU and hence the supply of real European collective goods, the fear is they would, given the present institutional structure, give room for an EU Leviathan. A subsidiarity test, as demanded by Art. 5 of the Lisbon Treaty, is required.

### *FISCAL SOVEREIGNTY OF THE MEMBER STATES*

Member States interpret an EU tax as a loss of their fiscal sovereignty. Hence, the EP (2007) emphasizes, “fiscal sovereignty will be maintained, but only temporary the receipts of certain taxes will go directly to the EU”. From an economic point, however, the eternal socialization of an asset’s return is the same of the socialization of the asset itself (Sinn & Feist, 2000). *Mutatis mutandis*, this goes too for the temporary pooling of the revenue of taxation. There is a loss of fiscal sovereignty, especially since own resources are described as a source of finance separate and independent of the Member States.<sup>3</sup> With these confusing use of words, the Member States cannot be fooled. However, it is the present state of the discussion.

Even if there is an absolute loss of sovereignty, this need not be an obstacle to the introduction of EU taxes. Belafi (2006) signals the possibility of an exchange. Though some Member States may stick to their aversion for a loss of fiscal sovereignty, they could overcome it, if something, in their eyes for the better, changes on the expenditure side of the budget. That would not be something unique to happen in the history of the EU. In the last century, it was the French president De Gaulle who was against the creation of own resources, i.e., agricultural levies and custom duties. He saw the own resources as an infringement on French fiscal sovereignty. However after he stepped down, in 1969 the

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<sup>3</sup> The reasoning behind the, at present, traditional own resources (agricultural levies and custom duties) is convincing: they are the direct result of the existence of the EU and its policies of food security and one internal market. The taxes proposed by the EU, however, are not the direct result of EU policies, unless one artificially strains the argument. Member States interpret the new resources quite logically as just a loss of fiscal sovereignty.

French saw their financial advantage and biggest interest with the financing of the EU agricultural policy with the first own resource of the Union: agricultural levies. For the Commission (2010) too a change in the EU budget is a *package approach*.

The loss of fiscal sovereignty, however, is not absolute. It is better to describe it as a creeping loss. With the introduction of the two traditional own resources in the seventies of the last century the Member States did already, on principle, did gave up their fiscal sovereignty.<sup>4</sup>

In addition, to speak of an absolute loss or creeping loss may be not the adequate way to speak about fiscal sovereignty. The Union is a *sui generis* institution. It is not that the Member States just lose something---they get something back for it. Indeed, they are no longer free to handle on their own; however, they get in return the right to handle collectively. The classical absolute concept of sovereignty may no longer be adequate to describe what is happening in the EU (Isenbaert, 2009; Jansen, 2011). Maybe it is better to speak of co-sovereignty (Brinkhorst, 2008; Menéndez, 2003).

Besides that, even on subjects, the Member States feel themselves still sovereign, that is no longer the case. In the Union, sovereignty is limited by the goal of one internal market (Brands, 2011, Max-Plank-Institut, 2010). National tax regimes should be in agreement with that goal (Traversa, 2011; Vanistendael, 2002). The free movement of goods, services, and capital is guaranteed. This would not be the case, e.g., if Member States should offer firms certain tax advantages when making their investments. The Union, for example, also prescribes upper and lower rates for every national VAT. In sum, there is no absolute freedom for national fiscal policy. It is no direct transfer of fiscal policy to the Union. Policy is a compromise; policy is at the margin of the EU goal of subsidiarity, to take measures on a as low as possible level, and the coordination of policies in the one internal market.

The same can be said of the influence of the European Stability and Growth Pact on the tax sovereignty of the Member States. The Pact gives rules that bite for the budget of the Member States. Recently, in the light of the present crisis in the euro-zone, tougher control mechanisms, including international involvement in national tax collection (Spiegel, 2011), and rules for punishment on infringements of the Pact were created.

### *FISCAL AUTONOMY OF THE UNION*

Financial autonomy is of course something every bureaucracy likes (Alves & Afonso, 2008). Therefore, it can never be a goal *per se*. It can only be a goal because of some other goal that otherwise cannot be attained. For the Union this is clearly the goal of securing expenses with an added value for Europe as a whole. If EU taxes should be a competence at the level of the EU we can look for guidance at the two principles that govern the use of Union competences: subsidiarity and proportionality (Gerken & Schick, 2003). Both are given in the Lisbon Treaty but seldom used in the discussion of EU taxation. If we do a subsidiarity test on an EU tax there follows no reason to give the competence to Brussels.<sup>5</sup> There are neither negative nor positive external effects nor advantages of scale that are important enough to change the level of competence to the

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<sup>4</sup> This was also already the case with the forerunner of the EU: the European Coal and Steel Community (ECSC). That institution had its own sources of income, levies on coal and steel, and even its own taxing authority.

<sup>5</sup> Pelkmans (2006) makes this test with the criteria of efficiency, equity and macro economic stability; cp. Barents (2005).

Union. To keep the fiscal sovereignty at the national level can also be based on the difference between the Member States in preferences of what an efficient and equitable tax system should look like.<sup>6</sup> Next to that, it can seriously be doubted, if Brussels does have the knowledge of what works in the different Member States.<sup>7</sup>

Also, Member States can refer to the principles of subsidiarity and proportionality when opposing EU taxation. Both principles are a safeguard against the introduction of EU taxes. In fiscal matters inside the Union, often much less in other areas, subsidiarity and proportionality have those features of design and enforcement that ensure that they do actually work (Ederveen, Gelauff & Pelkmans, 2006; cf. Barents, 2005). For tax rules to really work (Primo, 2010), it is necessary that, as regards the design, they should have an application as broadly as possible. National fiscal rules often concern only a small part of decision-making. The legislature shows its fiscally responsible behavior on a small scale, but avoids the important decisions on the grander scale. Except for the above mentioned traditional own resources and hence other taxes in line with them, it is, in reason, almost impossible to find other taxes that fulfill the requirements of subsidiarity and proportionality.

To maintain a principle it is important that it can not only be internally enforced by EU institutions but also externally. The Stability and Growth Pact, e.g., could only be enforced internally. The result was that as long as it were only small countries that were breaking the rules, the rules were maintained. When big countries did brake the rules, the rules were changed rather than respected. Subsidiarity and proportionality, on the other hand, do also have strong external control mechanisms.<sup>8</sup>

## TWO POSSIBLE EU TAXES WITHIN THE *STATUS QUO*

What are the options for a new own resource if we do not choose for what is basically an arbitrary *ad hoc* choice in view of the present EU criteria? If we respect the principles of subsidiarity and proportionality, there are two options: a declaratory tax and seigniorage.

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<sup>6</sup> Heinemann *et al.*, (2008) note, based on an analysis of the results from the European Values Study Foundation, that in the EU tax preferences do vary between Member States. These differences have grown with the enlargement of the EU by countries from Eastern Europe. If so, this is an additional argument for the current GNI-based levy and the declaratory tax, to be discussed later.

<sup>7</sup> Given the current *status quo*, tax measures are taken at the lowest possible level and they go no further than necessary. This is a great advantage. A recent British study (Gaskell & Persson, 2010) into the cost of regulation shows that, though difficult to measure and to compare, own British regulatory measures are two and a half times as efficient as regulation that is done by the EU. These outcomes are related to areas where the EU and UK share policy power: social policy, financial services, environmental and consumer protection. The difference would mainly be the result of the fact that EU legislation is uniform for all Member States and is difficult to adjust, e.g., by the requirement of unanimity in decision making of the Member States.

Krüger (2006) comes at the end of his study of European integration to the conclusion that in the future no longer the unity of Europe should be promoted. The preservation of differences between Member States should become the central theme of European integration.

<sup>8</sup> For this we can, e.g., look at the ruling of the German Constitutional Court on the Lisbon Treaty of 30.6.2009 (Bundesverfassungsgericht, BverfG, 2 BvE 2/08, Absatz-Nr. (1-421); Cp. Gerken & Schick, 2003.

### *A DECLARATORY TAX*

In a declaratory tax, a country still pays its national contribution to the EU, but shows its contribution to its citizens as a percentage of, e.g., the VAT on every receipt or as part of the personal income tax (Caesar, 2001). The amount is *pro forma* linked to a certain tax; a country can choose its own 'EU' tax. Since, as just-said, the preferred method of taxation differs between Member States, this is an advantage. Harmonization of tax bases between countries is also not necessary. Another advantage is that there are no additional collection costs. The quality of the national tax authorities does not matter either, as it would be of importance with a real EU tax. Because, at present, not every country collects the tax revenues it should in view of the existing tax-rate. With a real EU tax there would be no horizontal equity between the citizens of the Member States.

There are also disadvantages. Because, e.g., the rate of progression of the personal income tax differs in the Member State, there is, from that point of view, no horizontal equity among the citizens in the Member States. Moreover, the floodgates are open for other special taxes for other special goals. But the main argument against it is that the public, in a sense, is misled. The Union still receives contributions from the Member States; the autonomy of the EU seems larger than it is.

### *SEIGNIORAGE*

Seigniorage consists of the profits derived from the creation of the euro. It simply costs less to print euro banknotes than the value that is printed on it and for which it is brought into circulation. Banks also have to hold an interest-free credit with central banks for the quantity of banknotes in circulation. Seigniorage mainly consists of the proceeds, investment results, that are achieved with those interest-free credits by the central banks minus the printing costs of the banknotes and the costs to keep them in circulation. In the eurozone it are the proceeds of more than 800 billion euro. At the moment, seigniorage goes to the European Central Bank (ECB). The ECB is an independent institution inside the European Union. Afterwards, it is distributed to the national central banks and, as a result, to the national governments. Seigniorage can become a new source of income for the Union.

The euro has characteristics that make seigniorage a candidate for a truly own resource. To belong really to the EU, resources should be the result of an EU policy; just as custom duties are the result of the EU policy to create one common internal market. The introduction of the euro in 2002 is such a common EU policy. Also the seigniorage created by the euro is certainly not simply the result of adding-up the seigniorage all the Member States generated separately with their own currencies before. Most currencies did not have the status of an international reserve currency, the euro at present does have.

Seigniorage, however, has its disadvantages too. First, a solution should be found for those countries that do not, on principle or because they are not ready for it, use the euro. And of course when seigniorage goes to the Union there will be winners and losers among the Member States compared to their present national contributions. Besides that, seigniorage does not create a direct bond between citizens and the EU.

## CONCLUSION

The related problems of an EU Tax, the fiscal sovereignty of the Member States, and the financial autonomy of the Union are more apparent than real; it is a confusion of confusions. The Member States already have lost their fiscal sovereignty in the traditional absolute meaning of sovereignty. That already happened when they agreed in 1957 on the intention of introducing own resources. It was not a real absolute loss, however: it was a *quid pro quo*. They got decision power back for it in the greater part of the Union *per se*. If there should be a new own resource it can only happen because Member States agree on it of their own free will. *Juste retour* behavior might be the most natural thing to do and might open the door to new own resources. To introduce an EU tax, the toughest EU decision procedure is obliged. Not only the European Council has to decide unanimously but the Parliaments of all the 27 Member States have to agree too.<sup>9</sup> Hence if the Member States agree, they do it because they win; there is no loss. Taxation is always a *quid pro quo* process.

In the mean time, the discussion is an incoherent amalgamation of ideas, reflected by the present 'populist' discussion of the Member States and the Union. The Commission, e.g., states that own resources (Cp. C.-D Ehlerman, 1982) are revenue flowing automatically to the European Union budget, pursuant to the treaties and implementing legislation, without the need for any subsequent decision by national authorities. For the EP, on the other hand, it is the cornerstone principle for any future system of the EU's own resources, that full respect to the fiscal sovereignty of Member States does remain.

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<sup>9</sup> The outcome of the assessment also depends on the phase of the business cycle a Member State is in. The result can also be very different for regional and local governments in the Member States (Molino and Zuleeg, 2011).



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